

STATE OF SOUTH CAROLINA)
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COUNTY OF AIKEN)
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IN RE:)
)
THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN)
)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CIVIL ACTION NO. 2007-CP-02-0122
ORDER DENYING MOTION
TO ALTER, AMEND OR VACATE
ORDER APPROVING RESIGNATION
AND GRANTING RELATED RELIEF

This matter came before me on February 20, 2008 on Motion of Alfred A. Bradley and Albert H. Dallas to alter, amend or vacate this Court's Order of November 20, 2007 accepting the resignation of Bradley and Dallas; appointing successor Personal Representatives (PRs) of the Estate of James Brown (the "Brown Estate"), deceased; and appointing successor Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") and its subtrusts.

For reasons set forth in detail below, the motion is DENIED. This Court finds:

1. On November 20, 2007, Bradley and Dallas voluntarily, immediately and permanently resigned as PRs of Mr. Brown's Estate; as Trustees of the 2000 Trust and its subtrusts; as fiduciaries of all Brown Entities (other than Geronimo Music Ltd., LLC); and as directors, officers, agents and/or fiduciaries of the Estate, the Brown Trust or any Brown Entity.¹
2. The facts, together with applicable documents and law, made their resignation both appropriate and necessary in order to avoid removal.
3. Because their service in all capacities as PR/Trustees permanently and finally terminated on November 20, 2007, Bradley and Dallas are not Interested Persons as to the appointment and service of successor fiduciaries.

¹ As confirmed in the record, the Brown Entities to which the immediate and permanent resignation applies include James Brown Enterprises, Inc.; James Brown, LLC; James Brown Royalty Venture I SPC; James Brown Burn Lounge, LLC; Seventh Decade Productions, Inc.; and each and every entity in which James Brown and/or the Estate of James Brown has an interest (other than Geronimo Music, LLC).

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JURISDICTION AND PARTIES

Two separate actions for removal of David G. Cannon, Bradley and Dallas as fiduciaries were commenced in the Probate Court for Aiken County. The first was filed on January 24, 2007 by six children and eight grandchildren of Mr. Brown.² The Second was commenced by Tommie Rae Brown.³ On April 16, 2007 the children/grandchildren also brought an action for an accounting of the PR/Trustees.

All actions were removed to the Circuit Court by orders of the Honorable Sue H. Roe pursuant to S. C. Probate Code Section 62-1-302 (d).

The original defendants (respondents) were the PR/Trustees Cannon, Dallas and Bradley.

After March 7, 2007, Robert L. Buchanan, Jr. and Adele J. Pope, the Special Administrators (SAs) were joined. Other Interested Parties now part of this proceeding are certain putative children and the Attorney General of South Carolina.

Since February 13, 2007 this Court has held more than ten hearings, each of which was (among other matters⁴) related to the removal of Cannon, Dallas and Bradley as PR/Trustees, and the petition for accounting.

² Terry Brown, Larry Brown, Daryl J. Brown, Vanisha Brown, Deanna J. Brown Thomas, Yamma N Brown; Lindsey Delores Brown, Janise Vanisha Brown, Jason Brown Lewis, Sydney Lumar, Carrington Lumar, Tonya Brown, Romunzo Brown, and Forlando Brown.

³ Ms. Brown asserts that she is the spouse of Mr. Brown.

⁴ Also pending are various proceedings related to determination of heirs; contests of Decedent's 2000 Will and 2000 Trust ("Estate Plan") and other matters.

RESIGNATIONS OF BRADLEY AND DALLAS AND SUBSEQUENT TRANSACTIONS

On November 20, 2007, Bradley and Dallas resigned as PRs, Trustees of the Brown 2000 Trust, as Trustees of the Brown 2000 Trust's subtrusts, and as director, officer, agent and/or fiduciary of the Estate, the Brown Trusts and all Brown Entities (with the exception of Geronimo.)⁵ The resignations were on the record in open court. That day this Court issued its Order Accepting Resignation and Appointing Personal Representatives and Trustees.⁶ On that same day, Probate Judge Roe also issued a certificate of appointment of Buchanan and Pope.

On November 30, 2007 Bradley and Dallas filed a Motion to Vacate, Amend and Reconsider the November 20, 2007 Order. It was supported by affidavits of Dallas and Bradley dated November 29, 2007. The thrust of the Affidavits was that Dallas and Bradley's resignations were coerced by actions of this Court. On the same day, the Attorney General of Georgia served a Motion and amended Motion to set aside the Court's November 20, 2007 Order. It, also, was supported by the November 29th affidavits of Dallas and Bradley, as well as an affidavit of attorney William F. Hammond.

On December 28, 2007 certain children and grandchildren of James Brown filed a response to Dallas and Bradley's Motion to Vacate, Alter or Amend. They asserted that the Order properly accepted the termination of Bradley and Dallas, and properly appointed Buchanan and Pope.

⁵ Geronimo Music, LLC, is partially titled in the names of Cannon and Dallas.

⁶ Appointing Buchanan and Pope as PRs and as Trustees, with all powers and duties as if they had been appointed under the Will and 2000 Trust, with the exception of the requirement that a third Trustee be appointed.

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On January 6, 2008 Buchanan and Pope served a response to all motions to alter or amend. It was supported in part by affidavits of Buchanan and Pope. They requested:

1. That the Court proceed with, and deny, all attempts of Dallas and Bradley to set aside their permanent resignations;
2. That the Court order Bradley and Dallas to fully account for, and deliver to them as Successors, a complete accounting for the Estate and the 2000 Trust; and
3. That the Court conduct a full hearing on the propriety of their appointment and grant certain additional relief.⁷

On December 13, 2007 and January 28, 2008, Bradley and Dallas filed Supplemental Motions to Alter, Amend or Vacate. The supplemental Motions assert, in part, that this Court lacked jurisdiction to accept the resignations and appoint a successor.

Pope and Buchanan responded to the Supplemental Motions, asserting that they were not timely. Additional testimony, affidavits⁸ and filings were made a part of the record at the hearing.

⁷ Buchanan and Pope, among other things, asked the Court to find:

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- a. Because of the damage caused to James Brown, the James Brown 2000 Trust, and the Brown Entities by Messrs. Cannon, Dallas and Bradley, it was both proper and in the best interest of the Estate to appoint PRs and Trustees to serve in both capacities. Separating those functions would cause unnecessary duplication and hinder the Estate Plan of James Brown.
 - b. Buchanan and Pope ethically and properly performed their service as SAs and their claim for past services was properly ordered by the Court.
 - c. Buchanan and Pope, or other properly designated fiduciaries, may ethically serve simultaneously as PRs and Trustees under Mr. Brown's Will and the 2000 Trust, and Buchanan and Pope have properly done so since November 20, 2007.

⁸ Including the Affidavits of Buchanan and Pope, with attachments, served on January 18, 2008.

The Motions to Alter, Amend or Vacate of Dallas and Bradley were heard before me on February 20, 2007.⁹

FACTS RELATED TO RESIGNATION

Bradley and Dallas assert that their resignation was involuntary and procured under improper judicial or other influence. They assert numerous technical defects. And they challenge this Court's authority to issue the Order. The SAs and those opposing the return of Dallas and Bradley assert that they repeatedly violated this Court's orders, often secretly; made false statements in affidavits and in court testimony; and encouraged or allowed others to make false representations to the court. They further assert that by November 15, 2007 the removal of Dallas and Bradley was imminent and inevitable. They assert that Dallas, a lawyer himself, and Bradley followed the sound advice of their counsel to immediately and permanently resign in all capacities related to the Brown Estate, 2000 Trust and related entities. The facts in the record support this view.

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⁹ The hearing on reconsideration of the immediate and permanent removal of Bradley and Dallas was originally scheduled for January 9, 2008. Before the hearing Bradley and Dallas moved the undersigned to recuse himself. That motion was orally denied after a hearing on January 4, 2008. On January 9, 2008 Bradley and Dallas appeared with new counsel, R. Wayne Byrd, Esquire. After a brief delay requested by new counsel, the Court's Order denying the motion for recusal was issued on February 18, 2008.

On August 1, 2000 Cannon, Dallas and Bradley were appointed Trustees of the 2000 Trust and named PRs in Mr. Brown's last known executed Will.¹⁰

James Brown died on December 25, 2006.

On December 26, 2006, Atlanta attorney Joel Katz of Greenberg Traurig (GT) formed the James Brown Music Education Foundation, a Delaware non-profit organization. This entity purports to usurp some of the functions of the 2000 Trust.

On December 28, 2006 PR/Trustee Cannon received \$350,000.00 from the bank account of the 2000 Trust.

At some time after Mr. Brown's death, and before January 3, 2007, Dallas created a new, post-death document entitled "SCHEDULE B - IRREVOCABLE TRUST AGREEMENT OF JAMES BROWN". The new Schedule B represented that virtually all of Mr. Brown's assets, including his copyright and publishing rights, and image and persona had been transferred to the 2000 Trust.¹¹

On January 3, 2007, Trustee Bradley applied in his individual name for the rights to "Soul Brother #1." This name belonged to Mr. Brown.¹² Neither Dallas nor Bradley informed the SAs of these events.

¹⁰ Throughout the proceedings described herein certain heirs and the claimed spouse of Mr. Brown have reserved the right to challenge the 2000 Will and Trust. After the resignation of Bradley and Dallas, several actions have been filed for that purpose.

¹¹ More than a year later, on February 7, 2008 Mr. Dallas testified that it was merely a list of what he thought had been transferred prior to Mr. Brown's death. Both Dallas and Bradley testified that the new Schedule B was prepared with the assistance of counsel Cam Lewis and/or Strom Thurmond, Jr. The new Schedule B was, however, prepared before Bradley signed an acceptance as Trustee on January 3, 2007, and before either attorney was engaged.

¹² On March 5, 2007, Bradley agreed to return those rights to the 2000 Trust.

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On January 3, 2007 Cannon filed a \$912,000 judgment in Aiken County against Mr. Brown and the 2000 Trust.

On January 18, 2007, the Will was informally admitted to probate and Cannon, Bradley and Dallas were appointed PRs. Under the 2000 Will, Mr. Brown named six children as devisees of certain items of tangible personal property. The residue of his estate is devised to the 2000 Trust. If for any reason the gift to the 2000 Trust is invalid, the terms of the 2000 Trust are incorporated by reference in the Will, and Cannon, Dallas and Bradley named as Trustees.¹³

Two Petitions for removal of Cannon, Dallas and Bradley were filed by February 1, 2007. At an emergency hearing on February 9, 2007 the PR/Trustees appeared with three of their then-attorneys, Mr. Peeples, Mr. Thurmond and Mr. Miller. The Court did not allow examination of the PR/Trustees or other testimony. The PR/Trustees, through counsel, however made a number of representations to the Court, including:

1. Mr. Cannon and Mr. Dallas were not creditors of Mr. Brown's Estate (Tr.2/9, p.54)¹⁴
2. The only assets of the Estate were approximately \$208,000. All other assets, including Mr. Brown's home and his company James Brown Enterprises, Inc. (JBE, Inc.), were transferred to the 2000 Trust. (Tr 2/9/07, p 71)¹⁵

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¹³ More than a year after Mr. Brown's death, and seven years after the 2000 Trust was signed, Cannon, Dallas and Bradley have not filed any statement showing assets of either Mr. Brown's estate or the 2000 Trust as of Mr. Brown's death, despite numerous demands, notwithstanding an attempt made by Bradley and Dallas to identify some of the assets.

¹⁴ Mr. Thurmond further stated, "If they're creditors, they are creditors of the trust. That's not before Your Honor."

¹⁵ Among the documents which the PR/Trustees used to support their contention that the Estate had no assets was a copy of the Post-death Schedule B. They did not disclose that it was created after Mr. Brown's death.

On January 23, 2007, the Trustees' minutes reflect a meeting with Atlanta Attorney Bill Shearer of Powell Goldstein. On February 19, 2007 this Court issued an Order for appointment of an SA. The Court ordered that the "Personal representatives shall inform the Special Administrators of all matters that concern the administration of the Estate." On March 5, 2007 the PR/Trustees met with Joel Katz of the firm of GT in Atlanta. They voted that control of the 2000 Trust would be by majority action of Katz, Cannon, Bradley, Dallas, and Frank Copsidas. Neither Katz nor Copsidas was named in Brown's documents.¹⁶ Specifically, they determined that

"[g]oing forward decisions on the Trust's behalf are to be decided by the committee comprised of Buddy Dallas, David Cannon, Al Bradley, Frank Copsidas and Joel Katz. In the event of two dissenters, the members have agreed to further good faith discussion with the majority winning."

At the same meeting, the Trustees (with Katz and Copsidas) also decided to provide copies of "all Schedules B" to GT and to attorney Bill Hammond and William Shearer (Powell Goldstein), to determine the "next steps". Hammond and Shearer were described as "the Trust's other legal counsel with respect to estate planning matters."

On March 7, 2007, by supplemental order, Buchanan and Pope were appointed SAs. Their duties were limited to oversight. Where they were unable to reach consensus with the PR/Trustees, the SAs were directed to seek court intervention. Except for prohibitions against transfers and the duty of full disclosure, administration of the Estate remained in the hands of the

¹⁶ This decision was never communicated to the Court, the SAs, or the beneficiaries. The SAs learned of it shortly before the Nov. 15, 2007 hearing.

original PRs. The SAs were never told of the March 5 events described above, even though a detailed report was issued to the Trustees on March 13, 2007.

On March 14, an attorney for the PR/Trustees provided the SAs with what was represented to be Mr. Brown's Will, Trust, "Schedule B to the Trust," and several basic documents. The PR/Trustees failed to tell either their counsel, Keith Babcock, or the SAs that the "Schedule B to the Trust" was created after Mr. Brown's death.

Between March and June, 2007 Cannon, Dallas and Bradley refused to allow the SAs to review tax returns and other critical documents, although they asked them to approve a sale of Mr. Brown's music catalogue and royalties without due diligence to determine whether it was best for the Estate/Trust.

On April 13, 2007 the Court, in camera, encouraged the PR/Trustees to give the SAs all documents appropriate to an understanding of the Estate and affairs of Mr. Brown.

On June 13, 2007, after a formal motion of the SAs confirming that documents were not being provided, the Court ruled that the SAs must be given full access to the books, records and tax returns of the Estate, the 2000 Trust and Brown Entities. An Order to that effect was issued on June 25, 2007.

In June of 2007, the SAs also filed a motion questioning the propriety of GT=s remaining as counsel in certain litigation in the State of New York.¹⁷ Cannon, Bradley and Dallas asserted that GT should remain. They did not tell the Court or the SAs of their March 5, 2007 vote to

¹⁷ The SAs were concerned that GT and the PR/Trustees were relying on a document known as the "October 18th letter" by which GT, Dallas, Cannon, and others would receive a substantial portion of any future sale or refinance of Mr. Brown's royalties and other rights. They believed GT had a conflict in the representation.

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make Katz one of five decision makers for the 2000 Trust. The Court determined that other counsel should be retained for the New York litigation.

On June 25, 2007, the SAs issued a first "Quarterly Report" to the PR/Trustees. Their primary areas of concern were the lack of access to information and the potential conflict of the PR/Trustees in promoting a sale of Mr. Brown's assets which would benefit themselves, but might be harmful to the Estate/Trust.

On June 26, 2007, the PR/Trustees still refused access to the records. Cannon asserted that he would not produce any records, despite the Court's June 25 Order, unless instructed to do so by attorney William Hammond. The SAs were later asked to return after the 4th of July. They did so at the earliest date the PR/Trustees would schedule, July 17, 2007.

Meanwhile, on July 10, 2007, a member of Powell Goldstein, Mr. Shearer's law firm, delivered to PR/Trustee Dallas documents for Cannon, Bradley and Dallas to sign and to change the situs of the 2000 Trust to Georgia. The SAs did not learn of this until November, 2007.

On July 17, 2007, the SAs reviewed the Trust's bank account for the first time, and discovered that \$900,000 which should have been applied to Mr. Brown's debt at M&T Bank, had been partially misappropriated. Between August 1, 2006 and December 28, 2006, \$720,000 had improperly passed through the Trust's checking account and been disbursed by Cannon.

Throughout the period from March to November, discovery was ongoing as to whether Cannon, Dallas and Bradley should be removed as PR/Trustees.

On July 27, 2007 the SAs filed documents asserting that one or more PR/Trustees should be removed because of the alleged \$900,000 misappropriation.

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On or about August 10, 2007 Cannon wired \$866,000 to Honduras.¹⁸ That same day he filed a document with the Probate Court attempting to resign as PR only. In open court, however, he immediately and permanently resigned as PR, Trustee, and as officer, director, and fiduciary of any Brown Entity.¹⁹ He also restored \$350,000 from the M&T funds. Attorney Hammond appeared at the hearing along with Mr. Babcock and other attorneys for the PR/Trustees.

On August 10, 2007, Dallas and Bradley, along with the SAs, asked the Court to approve an Agreement by which Bradley and Dallas would temporarily remain as PR/Trustees, subject to greater restrictions. The Court approved the Agreement in an Order dated that same day. At the time of the Agreement, neither the SAs nor the Court knew of attempts to remove the Trust from the state; the creation of the post-death Schedule B; or the events of the March 5, 2007 meeting. Further, Bradley and Dallas, as remaining PR/Trustees, asserted that they knew nothing of the \$900,000 transaction.

¹⁸ Cannon alleges that the money was his wife's or jointly his and his wife's.

¹⁹ Except Seventh Decade Productions.

The August 10, 2007 Agreement was read into the record and approved by Dallas, Bradley and Cannon. Based on this Agreement, the hearing on the removal of Dallas and Bradley was delayed. Attorney Hammond and other attorneys, accountants and advisors to the Estate and Trust were terminated by the August 10th Order. The address of the Estate and Trust were changed to Buchanan's Aiken address. Cannon, Dallas and Bradley were directed to deliver all documents of the Estate and Trust, including files of terminated attorneys and accountants, to a central location. In addition, terminated accountant Phillip Farr²⁰ continued to work and communicate with Cannon, Dallas and Bradley.

On August 31, 2007, PR/Trustees Bradley and Dallas filed a motion to have JBE, Inc. declared an asset of the Estate, rather than of the 2000 Trust. The SAs did not join in the motion.

Bradley and Dallas attached various exhibits to support their position. They asserted that Mr. Brown, rather than the Trust, was the sole owner of JBE, Inc. They asserted the transfer never took place because the stock certificates were not executed. Importantly, they asserted that the JBE, Inc. Tax returns for 2000 - 2005, prepared by Mr. Farr, were the highest evidence that JBE, Inc. was never transferred to the trust because they were filed under penalties of perjury. Returns for those six years showed Mr. Brown, individually, to be the owner JBE, Inc.

²⁰ Farr's earlier tax returns for JBE, Inc. and Mr. Brown were acknowledged to be incorrect.

Phillip Farr testified in Court on November 15, 2007 that he was not advised of his termination as CPA. On September 5, 2007 Cannon's attorney, James B. Huff, directed Farr to conduct an audit of the Brown Entities and 7th Decade.²¹

Without the knowledge or consent of the SAs Farr's audit continued until shortly before the November 15, 2007 hearing.

In September, 2007, Dallas and Bradley filed a stipulation with the Court in which they again asserted that JBE, Inc. was an asset of the Estate and not the 2000 Trust.²² Again, the SAs did not join in that stipulation.

On or about September 6, 2007 Cannon, Dallas and Bradley filed claims against the Estate which appear to exceed 15% of its value. Their claims were directly contrary to the representation they made on February 9, 2007 that they had no claims against the Estate.

At the hearing held on September 24, 2007, Bradley and Dallas, through counsel, vigorously argued that JBE, Inc. belonged to the Estate. Again they asserted that the income tax returns, prepared by terminated accountant Phillip Farr, were the best evidence that JBE, Inc. was owned by the Estate.

By October 16, 2007, without the knowledge or consent of the SAs, Phil Farr had prepared, signed and filed tax returns for JBE, Inc. for the years 2004, 2005 and 2006. These

²¹ Seventh Decade was a company titled in the name of Cannon, into which Mr. Brown's monies were deposited. In testimony, Cannon claimed that Brown was his employee, and entitled to a salary only if he properly performed according to contract. In such case he was entitled to \$100,000 per month. Mr. Brown's performances grossed \$18 Million between 2003 and his death.

²² This stipulation was also consented to by Tommie Rae Brown, Terry Brown, Larry Brown, Daryl J. Brown, Vanisha Brown, Deanna J. Brown Thomas, Yamma N Brown; [REDACTED]

returns asserted that JBE, Inc. was owned by the 2000 Trust, and not by the Estate. The SAs learned of the returns after their filing.

Various matters related to the termination and failure to account of Cannon were taken up on September 24, 2007. The SAs, who had not been told of the March 5 meeting; the new Schedule B; the ongoing Phillip Farr audit; the engagement of Powell Goldstein; or the July attempt by Bradley, Cannon and Dallas to move the Trust to Georgia, agreed with Dallas and Bradley that there should be a delay in the hearing on their removal. Pope and Buchanan both asserted that they were attempting to help Bradley and Dallas, as remaining PR/Trustees to focus on various administrative functions of the Estate and Trust which the August 10, 2007 Order had directed needed to be completed.

According to the affidavits of Pope and Buchanan, by early November of 2007 they had learned of the considerations by Dallas and Bradley to move the Trust from South Carolina. They were also aware of the problems caused by the Phillip Farr returns; the failure of the PR/Trustees to prepare inventories or perform other administrative functions; and other issues. Many of these problems were addressed in Court on November 15, 2007.

At the November hearing Cannon testified that after resigning as PR/Trustee he had instructed Phil Farr to prepare the returns in order to save the Estate/Trust \$39 Million dollars. He asserted that the SAs would not file such returns. He gave no explanation for why he had not notified Bradley and Dallas or the Court. Cannon, on cross examination about various financial matters - including the \$18 Million which Mr. Brown's road shows generated between 2003 and 2006 - exercised his fifth amendment rights against self-incrimination.

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Also at the November 15, 2007 hearing Phil Farr testified that he prepared, signed and filed amended income tax returns for 2004, 2005, 2006 for JBE, Inc.,²³ based on information he had received in February of 2007. He testified that he had not had contact with the PR/Trustees during the period. He further testified that he prepared, signed and filed 3 years of JBE, Inc. income tax returns because he had a fiduciary duty to do so. He testified that filing the returns did not save millions of dollars. He gave no explanation why he changed the ownership of the company on the returns from Mr. Brown to the 2000 Trust. Dallas and Bradley assert that Farr never represented the James Brown Estate, merely James Brown individually before his death.

As Keith Babcock, litigation counsel for the PR/Trustees, later testified, it was clear by the afternoon of November 15, 2007 that Bradley and Dallas were to be subjected to substantial scrutiny on November 20, 2007. Even before their testimony, their failure to prepare any Inventory & Appraisement was troublesome. Mr. Cannon had testified that Bradley and Dallas knew of Cannon's payments to himself in early February, 2007. They had never reported it to the Court, and the alleged \$900,000 misappropriation remained undiscovered for five months until disclosed by the SAs. Further, in violation of the August 10, 2007 Order, they had not instructed Phillip Farr to deliver his file and discontinue work for the Estate, Trust and Brown Entities.

The Court's suggestions on November 16, 2007 were related to two matters. First, the Court suggested that attorney David Bell might want to withdraw a filing by Velma Brown asserting that she was still married to James Brown. [The record had revealed that she had divorced him.] The second was a suggestion that Bradley and Dallas consider resigning.

²³ And a 2006 return.

With the advice of counsel, they elected to resign instead of facing removal. Their resignation was immediate, permanent and complete. It was read into the record. Bradley and Dallas asserted that they had resigned so as not to damage the legacy of James Brown. The immediate and permanent resignation of Bradley and Dallas was accepted by all Interested Parties with respect to the Brown Estate/ the 2000 Trust and the Brown Entities.

THE RESIGNATION OF DALLAS AND BRADLEY WAS VOLUNTARY

Abundant evidence in the record supports that Bradley and Dallas voluntarily resigned. They had advice of competent counsel. They were not pressured by the Court or the SAs.

Although the Court was cognizant of certain evidence from the record, it was unaware of the full extent of the evidence likely to be presented on November 20, 2008, which it has since learned of.

The resignations were voluntary. They occurred before the full evidentiary hearing. Evidence revealed in response to the assertion of Bradley and Dallas that their resignation were coerced, however, shows that there was a substantial likelihood of their removal had they proceeded with the hearing.

Dallas and Bradley have voluntarily produced to the Court and parties the written advice of counsel that they resign, without waiving any attorney/client privileges. That advice was sound in light of the facts which had been uncovered by November 15, 2007, and which were likely to be brought out at the hearing, and as corroborated by evidence in subsequent hearings.²⁴

²⁴ For example, Dallas testified on February 7, 2008 that he knowingly directed his attorney to file documents with the Court related to the Trust's ownership of JBE, Inc. He stated that he authorized the filing of these documents to prevent his removal as PR/Trustee.

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Having resigned, as did Cannon, with no notice, the PR/Trustees have no grounds to complain about technical notice requirements, if any, of the statute or the governing documents related to resignation. Equity would not prevent the resignation of PR/Trustees who have breached their duty or acted improperly. The notice requirements of both the governing documents and the statutes are twofold. They protect PR/Trustees who do not voluntarily resign. And they prevent a gap in administration.

The resignation of Dallas and Bradley as Trustees could have been accomplished without the Court's intervention. Dallas and Bradley, as resigned PR/Trustees still have a duty to account for and deliver the assets of the Estate and Trust to the successors. Other than that, they have no further part in the administration of the Estate and Trust or the selection of a successor.

It is clear that multiple proceedings for the removal of Cannon, Dallas and Bradley were commenced in the Probate Court for Aiken County and removed to Circuit Court on motion of the Honorable Sue H. Roe. Once removed to Circuit Court pursuant to 62-1-302(d),²⁵ the various matters have been heard together.

²⁵ Formerly 62-1-302(c)

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LAW AS TO SUBJECT MATTER JURISDICTION

This Court did not lack subject matter jurisdiction to consider motions to remove Movants. Movants contend that any removal action is a civil action that must be commenced by a summons and complaint under Rules 2 and 3 of the South Carolina Rules of Civil Procedure (“SCRCP”). However, South Carolina Probate Code (“SCPC”) section 62-1-304 recognizes exceptions to the application of the SCRCP to matters within the scope of the SCPC: if the SCPC specifically provides to the contrary or the SCRCP is inconsistent with the provisions of the SCPC, then the SCRCP rules do not apply. Section 62-7-706 of the South Carolina Trust Code (“SCTC”), which is contained within the SCPC, provides that a trustee may be removed upon request of a settlor, co-trustee, or beneficiary or “by the court on its own initiative.” Because the SCTC specifically contemplates the removal of a trustee by the court sua sponte, a summons and complain cannot be required for a trustee’s removal. Otherwise, that Court would have to serve a summons and complaint on the trustee who was the subject of its removal action. The SCPC provisions are therefore inconsistent with the SCRCP on this issue and, consequently, a summons and complaint was not required to commence the removal actions in this case.²⁶

A consistent reading of SCPC section 62-1-302 and SCTC section 62-7-201 gives the Probate Court exclusive jurisdiction over matters involving the internal affairs of trusts.²⁷ The removal of a trustee would fall within the exclusive jurisdiction of the probate court. However, trust matters may be removed from the probate court to the circuit court pursuant to section 62-1-

²⁶ Even if a summons and complaint was required, any such requirement was waived by appearance and participation.

²⁷ SCPC section 62-1-302 grants the probate court “exclusive original jurisdiction” over trusts; SCTC 62-7-201 grants the probate court “exclusive jurisdiction” over the internal affairs of trusts.

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302(d)(4).²⁸ Actions to remove the trustees were commenced in the probate court and properly removed to this Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Motion of Bradley and Dallas to alter, amend or vacate this Court's Order of November 20, 2007 accepting the resignation of Bradley and Dallas; appointing successor Personal Representatives (PRs) of the Estate of James Brown (the "Brown Estate"), deceased;

²⁸ Movants argue that, despite SCPC section 62-1-302(d)(4), SCTC section 62-7-201 somehow precludes removal because SCTC section 62-7-201 does not itself provide for removal of trust actions. However, as with any legislative act, the provisions of the SCPC, which includes the SCTC, must be read as consistent when reasonably possible. It would be inconsistent to read section SCTC 62-7-201 as somehow precluding removal of a trust matter from the probate court to the circuit court, merely because it is silent on that issue, when SCPC section 62-1-302(d)(4) specifically permits the removal of trust matters from the probate court to the circuit court. Moreover, SCTC section 62-7-201 is specifically subject to SCPC section 62-1-302(c) [sic], which was the applicable subsection governing removal before the insertion by the legislature of a new subsection (c) C reconciling jurisdiction over relationship issues between the family and probate courts C in 2005, redesignating former subsection (c) as subsection (d). SCTC section 62-7-201, contained in 2005 Act # 66, was enacted on May 23, 2005, with an effective date of January 1, 2006. SCPC section 62-1-302(c) was redesignated as (d) by 2005 Act #132, enacted on June 3, 2005, and effective on that date. Thus, the SCTC was enacted before the redesignation of SCPC section 62-1-302(c) as (d). The clear intent of the legislature was to make the subject matter jurisdictional provisions of SCTC section 62-7-201 subject to the removal provisions of what is now SCPC section 62-1-302(d).

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and appointing successor Trustees of the James Brown 2000 Irrevocable Trust (the “2000 Trust”) and its subtrusts is DENIED.

2. Their appointments having been permanently terminated, Bradley and Dallas have no further interest in these proceedings except to account for their actions and deliver the assets of the Estate and Trust to their successors.

3. Bradley and Dallas shall deliver to this Court their final accounting of their acts as Personal Representatives and Trustees within ninety (90) days and shall immediately deliver to the Successor PR/Trustees all assets, books and records of the Estate, Trust and Brown Entities not previously delivered.

AND IT IS SO ORDERED,



Doyet A. Early, III
Resident Judge, Second Judicial Circuit

March 7, 2008
Aiken, South Carolina